

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STATE OF NEW YORK, *et al.*,

Plaintiffs

v.

MICROSOFT CORPORATION,

Defendant.

Civil Action No. 98-1233 (CKK)

ORDER

Pending before the Court is an oral motion by various media entities, through counsel, for access to the deposition transcripts of two witnesses appearing on Defendant Microsoft's witness list. As these deposition transcripts have not been filed with the Court, these media entities have effectively asked that the Court order Microsoft to produce the deposition transcripts to them. As justification for this request, the media entities, through the proffer of counsel, contend only that, pursuant to an anonymous editorial decision, the media would like access to the transcripts of the depositions of these two individuals. Microsoft objects on the grounds that redaction and production of these transcripts would be overly burdensome given that it is in the midst of trial and about to commence its presentation of evidence. The media's motion and Microsoft's objection were presented orally on the morning of April 10, 2002, the record of which is incorporated herein by reference.

Prior to the commencement of evidentiary hearings in this case, the Court addressed, at length, the issue of press access to discovery depositions. *See State of New York v. Microsoft*, No. 98-1233 (D.D.C. February 24, 2002). In that opinion, the Court noted the complete "absence

of precedent which indicates a clearly established right to access to” deposition transcripts. *Microsoft*, No. 98-1233, slip op. at 10. The media entities have not identified any new argument or precedent which changes this conclusion. In contrast to the unchanged law in this area, the circumstances surrounding the Court’s consideration of this issue are substantially altered. In particular, the burden foisted upon Microsoft (and its counsel) by a sudden demand that they comb through and redact confidential information from depositions is far greater now, in the middle of trial and as Microsoft is about to commence presentation of its case, than prior to the commencement of evidentiary proceedings.

Of greatest concern to the Court is the precedent which would be set by granting the media entities’ request. To do so would create precedent, where there has been none, which indicates that, on little more than a whim, the media may enter a case and demand access to unfiled discovery materials without regard to the clear burden such a demand imposes upon parties embroiled in litigation. The path to such an outcome has not been cleared by existing law, and this Court declines to blaze the trail.

Accordingly, it is this 12th day of April, 2002, hereby

ORDERED that the oral motion of the media entities is DENIED.

SO ORDERED.

COLLEEN KOLLAR-KOTELLY
United States District Judge